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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,518	07/11/2003	Edward J. Mueller	31660-1001	6589

5179	7590	09/27/2007
PEACOCK MYERS, P.C.		
201 THIRD STREET, N.W.		
SUITE 1340		
ALBUQUERQUE, NM 87102		

EXAMINER
SILBERMANN, JOANNE

ART UNIT	PAPER NUMBER
3611	

MAIL DATE	DELIVERY MODE
09/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/618,518	MUELLER, EDWARD J.	
	Examiner	Art Unit	
	Joanne Silbermann	3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,29-32,34-63 and 66-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26,29-32,34-63,66-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 26, 29, 30, 32, 34, 35, 38, 41, 48, 51-54 and 57-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Schweinberger, US #6,129,035.
3. Schweinberger discloses a lighted pole and banner assembly including a support (connected sections 14A, 14B, 14C) made of clear plastic comprising a hollow cylinder having no openings in its lateral surface, banner assembly 50 (Figure 2) comprising a banner attached to the lateral surface of the cylinder, a dimension of the banner along the support being substantially shorter than the entire length of the support, and (filament) light source 44 (which may be colored, column 2 line 30) disposed in the support between the ends thereof for illuminating the support and the banner.
4. The clear support is inherently transparent and translucent. Translucent sections may be used (column 2 lines 24-29). The shape of the support is considered to be inherently ornamental.
5. The support is made of a plurality of telescoping sections (column 3 lines 29-42).
6. The light source is powered by a car battery through a cigarette lighter (column 3 line 5) and the support is mounted to vehicle 42 (column 3 line 24). Holder 46 mounts the support and accommodates electrical cord 16.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 36, 37, 39, 40, 42-47, 49, 50, 55, 56, 63 and 66-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schweinberger.

9. Schweinberger does not teach using LEDs, rope lights, neon, fluorescent lights, or fiber optics. These light sources are all old and well known in the art. It would have been obvious to a person having ordinary skill in the art to utilize a different light source as an alternative equivalent. It also would have been obvious to utilize a different light source so as to use less electricity and require less frequent changing of lights.

10. Schweinberger does not teach carrying brightness, blinking lights, or sequential lighting, however these are common in the art of illuminated displays. Dimmer switches are well known in the art of illumination, and blinking and sequential lights are commonly used. It would have been obvious to utilize a dimmer function for the light sources so that the appropriate amount of illumination may be employed. It also would have been obvious to utilize blinking or sequential lighting to attract attention to the display.

11. Regarding claim 47, Schweinberger does not teach the sections as being integral, however the sections are fastened together. It has been held that the term "integral" is sufficiently broad to embrace constructions united by such means as

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fastening and welding. In re Hotte, 177 USPQ 326, 328 (CCPA 1973). Also, it would have been obvious to a person having ordinary skill in the art to provide an integral support if it is not necessary to collapse the display, and a stronger support is required.

12. Schweinberger does not specifically teach any methods, however the methods of the instant claims (providing, disposing, etc.) would have been obvious to one of ordinary skill given the structure shown in Schweinberger.

13. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schweinberger as applied to claim 26 above, and further in view of Taylor, US #2,509,707.

14. Schweinberger does not teach a luminescent support, however this is well known in the art. Taylor teaches a hollow luminescent support having illumination disposed within the support (Figures 1 and 2). It would have been obvious to one of ordinary skill to utilize a luminescent support so as to provide a different looking display, and to provide a support that glows after the light is turned off.

15. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schweinberger as applied to claim 59 above, and further in view of Siew, US #4,833,443.

16. Schweinberger does not teach a holder having arms, however such a holder is well known in the art. Siew teaches a bracket for mounting an illuminated display including electrical cord 15 accommodated by bracket 7 having space 11 between two arms (Figure 1). It would have been obvious to one of ordinary skill to utilize such a

bracket so that the display may be mounted over a window or other thin object (as shown by Siew).

Response to Arguments

17. Applicant's arguments filed July 9, 2007 have been fully considered but they are not persuasive.

18. In response to Applicant's amendments to claims 26 and 63, a new reference has been applied to show the height of the banner as being less than the entire support.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 571-272-6653. The examiner can normally be reached on M-F 5:30 - 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Joanne Silbermann
Primary Examiner
Art Unit 3611

js
22 September 2007